IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 761 OF 2006.
IN
FIRST APPEAL NO. 244 OF 2006.

Mrs.Sybil Dias & others. ... Applicants.
Versus.
Municipal Corporation of
Greater Mumbai and another. ... Respondents.

Shri G.S.Godbole for the Applicants.

Shri J.J.Xavier for the Respondent No.1.

Shri A.J.Almeida for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 4th May, 2006.

P.C.:

1. Rule. The learned Advocates appearing for the Respondents waive service.

2. The Appeal is by the original Plaintiffs. The challenge in the suit filed by the Applicants was to the notice issued by the Respondent No.1-Corporation directing demolition of the compound wall constructed by the Applicants. The learned Advocate for the Applicants submitted that the Applicants constructed the compound wall on the basis of the permission dated 29th May 1998. He submitted that after getting the survey done through the City Survey Officer in July 1997, the wall was constructed and therefore, there was substantial compliance with Condition No.6 incorporated in the permission dated 29th May 1998. He stated that the survey carried out at the instance of the Applicants was cancelled as per the order passed by the City Survey Officer No.3 and a fresh survey map was prepared on 31st

October 1997. He pointed out that an Appeal has been preferred against the said survey report by the Appellants which is pending before the Deputy Director (Land Records) Konkan Division, Mumbai. He, therefore, submitted that as the First Appeal is admitted, the compound wall deserves to be protected.

3. The learned Advocates appearing for the Respondents have brought to my notice the finding recorded by the trial Court as regards suppression of the facts on the part of the Applicants while filing the suit. The learned Advocates appearing for the Respondents submitted that in view of the said finding, the discretionary relief of temporary injunction should not be granted.

4. I have considered the submissions. The permission was granted on 29th May 1998 to the Applicants to construct the compound wall. One of the conditions being Condition No.6 in the said permission was that the compound wall should be constructed after obtaining demarcation from the District Inspector of Land Records. In the plaint there is a reference to the demarcation carried out at the instance of the Applicants in 1997. The suit was filed on 28th June 2000. It is an admitted position that the survey map which was prepared on the basis of Application of the Applicants was cancelled by the subsequent order passed by the City Survey Officer and a fresh measurement plan

was prepared on 31st October 1997. As the Applicants were aggrieved by the map drawn on 31st October 1997, they have preferred an Appeal before the Deputy Director of Land Records, Konkan Division, which is pending.

5. The trial Court has recorded that though survey map prepared in 1997 was cancelled by a subsequent order and a fresh map was prepared on 31st October 1997, the fact of cancellation of the survey map and preparation of new map was suppressed while filing the suit. In my view, primafacie, these facts go to the root of the matter as one of the essential condition incorporated in the permission granted in favour of the Applicants was that the compound wall will be constructed only after demarcation. Primafacie, there is substance in the submission by the Advocates for the Respondents that the material facts were suppressed by the Applicants. There is finding to that effect recorded by the trial Court. Hence no case is made out for grant of interim relief. Application is rejected. It is made clear that if the Applicants succeed in the Appeal which is pending with the Deputy Director of Land Records, the Applicants will be entitled to take out a fresh application for appropriate interim relief.

Judge.